HARRY J. PIKE

IBLA 82-960 Decided September 14, 1982

Appeal from decision of the Alaska State Office, Bureau of Land management, rejecting mining claim recordation filing. AA-27372.

Affirmed.

1. Mining Claims: Lands Subject to -- Mining Claims: Recordation -- Patents of Public Lands: Effect

The effect of the issuance to the State of Alaska of a patent without a mineral reservation is to transfer the legal title from the United States, and to remove from the jurisdiction of this Department the consideration of all disputed questions concerning rights to the land, including questions as to the alleged superiority of a mining claim to the State selection. Where the lands on which the claim is situated have been patented to the State, BLM properly refused recordation of the claim, since it has no jurisdiction over the claim.

APPEARANCES: Roger L. Hudson, Esq., Anchorage, Alaska, for appellant; Dennis J. Hopewell, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for Bureau of Land Management; M. Francis Neville, Esq., Office of the Attorney General, State of Alaska.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Harry J. Pike has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), rejecting the recordation of his mining claim, known as the Rapids No. 1 placer mining claim, serial number AA-27372. We affirm.

Appellant's claim was located in 1954, and notice of the location was filed with the local territorial commissioner. He alleges that he has performed requisite assessment on the claim and maintained an active presence

on the site from 1954 to the present. In August and September 1979, he timely filed, respectively, copies of this notice of location and a proof of assessment work in compliance with the requirements of section 314(a) and (b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a) and (b) (1976). 1/

In reviewing the material appellant filed about his claim, BLM determined that the lands on which his claim is situated were patented to the State of Alaska on August 31, 1966, without mineral reservation, by patent number 50-67-0124. BLM held that, since this patent had transferred legal title from the United States to the State of Alaska, the Department had no jurisdiction over these lands. Accordingly, on May 19, 1982, it rejected the recordation filing for this claim.

[1] BLM correctly refused appellant's filing of recordation information. Appellant's claim was located in 1954, prior to the patenting of the lands to the State of Alaska in 1966. However, the issuance of this patent without a mineral reservation ended the Department's authority to resolve conflicting claims to the patented lands, including its authority to recognize the validity of mining claims situated on these lands. Silver Spot Metals, Inc., 51 IBLA 212 (1980); see Germania Iron Co. v. United States, 165 U.S. 379, 383 (1897). Accordingly, BLM was without authority to recognize appellant's claim, and it properly declined to accept notice of its location, since no purpose would be served by doing otherwise.

Similarly, this Board lacks jurisdiction to recognize appellant's claim. Accordingly, it is unnecessary to consider his arguments that he was not given constitutionally adequate notice of the State's selection and that his rights as holder of a valid existing claim have been diminished in violation of section 6(a) of the Alaska Statehood Act, 72 Stat. 339, 340 (1958), since we are unable to afford him any remedy.

Further, we cannot now recommend that the Attorney General take any action on behalf of the United States to vacate patent number 50-67-0124 in order to recognize any right that appellant may have in these lands. Suits brought by the United States to vacate or annul any patent shall only be brought within 6 years after the date of issuance of such patents or after the date of discovery of fraud leading to the conveyance. 43 U.S.C. § 1166 (1976); Exploration Co. v. United States, 247 U.S. 435 (1918). More than

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1/ On May 23, 1980, BLM issued a decision declaring appellant's claim abandoned and void because he did not comply with 43 CFR 3833.2-1(a), since he had filed a copy of his proof of labor for the 1978 assessment year rather than the 1979 assessment year, as required. On appeal to this Board, we reversed BLM's decision, citing Topaz Beryllium Co. v. United States, 649 F.2d 775 (10th Cir. 1981), and Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981), and holding that his failure to comply was a curable defect. Harry J. Pike, 57 IBLA 15 (1981). Since appellant provided BLM with a copy of the 1979 proof of assessment in his notice of appeal, he did cure his defective filing.

6 years has elapsed since the issuance of this patent, and there is no evidence of fraud. Accordingly, we cannot recommend that any action be taken. 2/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Jerry Muskrat
Administrative Judge
Alternate Member

2/ We note that there is doubt whether a suit instituted by appellant to vacate the State's patent would also be barred by this statute of limitations. Compare Putnam v. Ickes, 78 F.2d 223, 227 (D.C. Cir.), cert. denied, 296 U.S. 612 (1935); and Capron v. Van Horn, 258 P. 77, 81 (Cal. 1927).